

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PATRICK WELCH, ET AL.)
vs.) Case No. 4:11-cv-535
Plaintiffs,)
vs.)
MERCK SHARPE & DOHME CORP., ET AL.,) JURY TRIAL DEMANDED
Defendants.)

**DEFENDANT MERCK SHARPE & DOHME CORP.'S
MOTION TO SEVER**

Defendant Merck Sharp & Dohme Corp. (“Merck”) hereby moves the Court to sever the claims of the plaintiffs in this case because they have been improperly joined under Federal Rule of Civil Procedure 20.

As set forth more fully in the attached memorandum of law, plaintiffs have sought to improperly join in one lawsuit the claims of ninety-one different people from twenty-eight different states who allege injury as a result of using the prescription osteoporosis drug Fosamax and/or its generic equivalent, Alendronate Sodium. Plaintiffs do not allege that they were prescribed their drugs by the same doctor (a virtual impossibility since they reside in 28 different states) – or that they took the drugs for the same period of time. Plaintiffs also fail to allege that they have similar medical histories or that they suffered the same injuries. Instead, plaintiffs claim to have suffered a wide variety of “severe and permanent personal injuries, including weakened or brittle bones, multiple stress fractures, and low energy femoral fractures” as a result of their use of defendants’ drugs. (Pet. ¶ 93.)

Because such claims do not arise out of the same transaction or occurrence under Rule 20 of the Federal Rules of Civil Procedure, they cannot be joined in one suit.

WHEREFORE, Merck respectfully requests that the Court sever plaintiffs' claims, pursuant to Federal Rules of Civil Procedure 20 and 21, so that each plaintiff's claims can proceed in a separate lawsuit.

Respectfully submitted,

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By: /s/ Dan Ball

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Attorney for Defendant
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 22, 2011, a copy of the foregoing was served via U.S. mail, first-class postage prepaid, to the following counsel and filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel of record.

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By: /s/ Dan Ball